

REMARKS

The Office Action dated March 22, 2006, has been received and carefully considered. In this response, claims 1-26 have been amended. Entry of the amendments to claims 1-26 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE DOUBLE-PATENTING REJECTION OF CLAIMS 1-26

On page 2 of the Office Action, claims 1-26 were rejected under the judicially created doctrine of obviousness-type double-patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,899,714.

Applicants respectfully request that the aforementioned double-patenting rejection of claims 1-26 be held in abeyance until all other substantive issues in the present patent application have been resolved.

II. THE DOUBLE-PATENTING REJECTION OF CLAIMS 1-26

On pages 2-3 of the Office Action, claims 1-26 were rejected under the judicially created doctrine of obviousness-type double-patenting as being unpatentable over claims 1-14 of U.S. Patent Application No. 10/816,777.

Applicants respectfully request that the aforementioned double-patenting rejection of claims 1-26 be held in abeyance until all other substantive issues in the present patent application have been resolved.

III. THE ANTICIPATION REJECTION OF CLAIMS 1-9, 13-19, AND 21-26

On pages 3-4 of the Office Action, claims 1-9, 13-19, and 21-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Cotrel (U.S. Patent No. 5,005,562). This rejection is hereby respectfully traversed with amendment.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior

art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claims 1, 13, 21, and 22, the Examiner asserts that Cotrel discloses the claimed invention. However, the Examiner also encourages the Applicant to focus on the structural distinctions (e.g., engagement of vertebral screws and connecting screws) rather than on usage distinctions.

Applicant has amended claims 1, 13, 21, and 22 to recite that the connecting screw has a first end configured to be substantially transversely received by an engaging portion of the vertebral screw. It is respectfully submitted that such a limitation is not disclosed, or even suggested, by Cotrel. Accordingly, it is respectfully submitted that claims 1, 13, 21, and 22 are allowable over Cotrel.

At this point it should be noted that Applicant has also amended claims 1, 13, 21, and 22 to remove language (e.g., "operable") intended to indicate usage distinctions and provide claim term consistency.

Regarding claims 2-9, 14-19, and 23-26, these claims are dependent upon independent claims 1, 13, and 22. Thus, since independent claims 1, 13, and 22 should be allowable as discussed above, claims 2-9, 14-19, and 23-26 should also be allowable at least by virtue of their dependency on independent claims 1, 13, and 22. Moreover, these claims recite additional

features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1-9, 13-19, and 21-26 be withdrawn.

IV. THE ANTICIPATION REJECTION OF CLAIMS 1-9 AND 13-26

On page 4 of the Office Action, claims 1-9 and 13-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Steffee (U.S. Patent No. 4,611,581). This rejection is hereby respectfully traversed with amendment.

Regarding claims 1, 13, 21, and 22, the Examiner asserts that Steffee discloses the claimed invention. However, the Examiner also encourages the Applicant to focus on the structural distinctions (e.g., engagement of vertebral screws and connecting screws) rather than on usage distinctions.

Applicant has amended claims 1, 13, 21, and 22 to recite that the connecting screw has a first end configured to be substantially transversely received by an engaging portion of the vertebral screw. It is respectfully submitted that such a limitation is not disclosed, or even suggested, by Steffee. Accordingly, it is respectfully submitted that claims 1, 13, 21, and 22 are allowable over Steffee.

At this point it should be noted that Applicant has also amended claims 1, 13, 21, and 22 to remove language (e.g., "operable") intended to indicate usage distinctions and provide claim term consistency.

Regarding claims 2-9, 14-20, and 23-26, these claims are dependent upon independent claims 1, 13, and 22. Thus, since independent claims 1, 13, and 22 should be allowable as discussed above, claims 2-9, 14-20, and 23-26 should also be allowable at least by virtue of their dependency on independent claims 1, 13, and 22. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1-9 and 13-26 be withdrawn.

V. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the

present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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